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In the Supreme Court of the United States

October Term, 1948.

IN THE MATTER OF THE PROCEEDINGS AGAINST

OSCAR B. ELAM.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

No. 90—Miscellaneous.

SUMMARY OF THE MATTER INVOLVED.

The Supreme Court of Missouri, in its opinion handed down April 12, 1948 (Rehearing denied May 27, 1948), found that the petitioner herein, Oscar B. Elam, had violated Sections 4.01, 4.06 and 4.17 of the Canons of Ethics adopted by the Missouri Supreme Court for the conduct of attorneys admitted to practice before the courts of Missouri in that:

(1) His attitude and conduct toward the trial court were flagrantly disrespectful;

(2) He represented conflicting interests in a partition suit; and

(3) That he engaged in personalities and made false charges in the nature of personal attacks on opposing counsel.

The Supreme Court of Missouri gave judgment that said Oscar B. Elam should be and is disbarred from the practice of law in the State of Missouri.

Opinion in the Supreme Court of Missouri.

The opinion of the Supreme Court of Missouri, not yet printed in the official state reports, is found at pages 710 to 718, inclusive, of 211 Southwestern Reporter (2d) Series.

STATEMENT OF THE CASE.

The respondents respectfully invite the attention of this Court to the opinion of the Supreme Court of Missouri *In re Elam,* reported in 211 S. W. (2d) 710, and the briefs, making up part of the record in this case, filed in the Supreme Court of Missouri for a full statement of the facts.

Briefly summarized, the proceeding against Mr. Elam was instituted directly in the Supreme Court of Missouri by leave of that court under its rule 5.03 on an information filed by the members of the Circuit Bar Committee of the Sixteenth Judicial Circuit (Jackson County), charging the respondent therein, Oscar B. Elam, a lawyer who resides and offices in that circuit, with professional misconduct in violation of certain of the Canons of Ethics adopted by the Missouri Supreme Court. The information prayed that if upon full hearing Mr. Elam was found guilty, a judgment be entered assessing such penalty or punishment as the Missouri Supreme Court should deem proper. The Supreme Court of Missouri appointed a Special Commissioner to take the evidence and report to the Court his findings of fact and conclusions.

During the entire course of the proceedings, Mr. Elam was given ample notice and opportunity to be heard, and to present all of the witnesses and evidence which he desired. Able counsel were appointed to assist him and participated actively in hearings before the Special Commissioner as well as filing a brief in his behalf in the Supreme Court of Missouri. Mr. Elam *pro se* appeared in the Supreme Court of Missouri and vigorously argued his case as well as presenting to that Court numerous motions, petitions and other matters.

After the judgment of the Supreme Court of Missouri had been entered ordering Mr. Elam disbarred from the practice of law in Missouri, and after Mr. Elam's motion for rehearing had been denied on May 27, 1948, Mr. Elam petitioned the Supreme Court of the United States for a writ of certiorari directed to the Supreme Court of the State of Missouri.

In the various documents filed with this Court in connection with his petition asking for a writ of certiorari, Mr. Elam has urged that this Court hear the case on the ground that the action of the Supreme Court of Missouri denied to him rights guaranteed under the Fourteenth Amendment of the Federal Constitution. While Mr. Elam argues the merits of the judgment of the Supreme Court of Missouri at some length, his only claim that this Court has jurisdiction is based upon his general allegation that the actions of the Missouri Supreme Court denied to him privileges and immunities of a citizen of the United States and did not afford him due process of law or the equal protection of the laws.

SUMMARY OF THE ARGUMENT.

I.

The judgment of the Supreme Court of Missouri disbarring petitioner from the practice of law in that state does not deny him any privilege or immunity of a citizen of the United States.

II.

The proceedings before the Missouri Supreme Court accorded petitioner due process of law and the equal protection of the laws.

III.

Since no right guaranteed by the Constitution was denied to petitioner, the judgment of the Supreme Court of Missouri is binding upon this Court and the Supreme Court of the United States has no jurisdiction or authority to review the action of that Court.

ARGUMENT.

I.

The judgment of the Supreme Court of Missouri disbarring petitioner from the practice of law in that state does not deny him any privilege or immunity of a citizen of the United States.

This Court has held that the right to practice law in the state courts is not a privilege or immunity of a citizen of the United States within the meaning of the first section of the Fourteenth Amendment of the Constitution. *Bradwell* v. *State of Illinois* (1872), 83 U. S. 130, 16 Wall. 130, 21 L. Ed. 442. *Ex parte Lockwood* (1894), 154 U. S. 116, 38 L. Ed. 929, 14 S. Ct. 1082. *Selling* v. *Radford* (1917), 243 U. S. 46, 61 L. Ed. 585, 37 S. Ct. 377.

In *Bradwell* v. *Illinois, supra,* this Court said:

> "* * * the right to control and regulate the granting of license to practice law in the courts of a state is one of those powers which are not transferred for its protection to the Federal Government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license."

In *Selling* v. *Radford, supra,* this Court held that it had no power or authority to review, re-examine or reverse the action of the state supreme court in disbarring a member of the bar of its own court.

In *Keeley* v. *Evans* (Dist. Ct., Oregon, 1921), 271 Fed. 520, appeal dism. (1922), 257 U. S. 667, 66 L. Ed. 426, 42 S. Ct. 184, the court, relying on decisions of this tribunal, held that while the right of an attorney to practice law

is a property right of which he cannot be deprived without due process of law, refusal to grant him a license to practice in the courts of a state is not an abridgment of any privilege or immunity in which he is protected by the Fourteenth Amendment of the Constitution of the United States.

The Circuit Court for the Northern District of California in 1898 in *Philbrook* v. *Newman*, 85 Fed. 139, held that a judgment of a state court disbarring an attorney from practicing before it does not deprive him of any privilege or immunity secured by the Constitution or laws of the United States. In that case, plaintiff received the right to practice law in the State of California in pursuance of the laws of that state and was disbarred under the provisions of the laws of California. The Court states at 85 Fed. 143:

> "In the proceedings to disbar him, he was not deprived of any right, privilege, or immunity secured to him by the Constitution or laws of the United States. And it might be said the judgment against him was not rendered as a punishment, but for the protection of the Court."

The specific application of the principle that the right to practice law is not a privilege or immunity protected by the Fourteenth Amendment has recently been made in the case of *Brents* v. *Stone*, 60 Fed. Supp. 82.

II.

The proceedings before the Missouri Supreme Court accorded petitioner due process of law and the equal protection of the laws.

> "It has been so often pointed out in the opinions of this Court that the 14th Amendment is concerned with the substance and not with the forms of pro-

cedure, as to make unnecessary any extended discussion of the question here presented. The due process clause does not guarantee to a citizen of any state any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceedings and the character of the rights which may be affected by them."

Missouri ex rel. Hurwitz v. *North* (1926), 271 U. S. 40, l. c. 42, 70 L. Ed. 818.

The case of *Missouri ex rel. Hurwitz* v. *North, supra,* involved a review in this Court of a judgment of the Supreme Court of Missouri revoking the license of a Missouri physician. The procedure followed was that prescribed by the statutes of the state, calling for hearings before a state board subject to review by the courts. To the contention of petitioner that he was denied the equal protection of the laws in violation of the Fourteenth Amendment, this Court said at page 43 of 271 U. S.:

> "A statute which places all physicians in a single class and prescribes a uniform standard of professional attainment and conduct, as a condition of the practice of their profession, and a reasonable procedure applicable to them as a class to insure conformity to that standard, does not deny the equal protection of the laws within the meaning of the 14th Amendment."

These principles have been applied by the Supreme Court of the United States to the right to practice law in a state in *Ex parte Wall* (1882), 108 U. S. 281, 2 S. Ct. 569; *Selling* v. *Radford* (1917), 243 U. S. 46, 61 L. Ed. 585, 37 S. Ct. 377; and *Re Summers* (1944), 325 U. S. 561, 89 L. Ed. 1795.

The Court's attention is respectfully invited to the excellent discussion of Mr. Justice Bradley in *Ex parte Wall, supra,* calling attention to the fact that the proceeding to strike an attorney from the rolls is one within the proper jurisdiction of the Court in which he is an attorney, and does not violate the constitutional provision which requires an indictment and trial by jury in criminal cases, since it is not a criminal proceeding and not intended for a punishment but to protect the Court from the official ministrations of persons unfit to practice therein. This Court points out that such a proceeding is not an invasion of the constitutional provision that no person shall be deprived of life, liberty or property without due process of law, but that the proceeding itself, when instituted in proper cases, giving notice and opportunity for hearing to the accused, is due process of law.

In *Selling* v. *Radford, supra,* this Court held that it has no power to review the action of a state court of last resort in disbarring a member of the bar of the courts of that state for personal or professional misconduct, and that the condition created by the judgment of the state court must be recognized, unless "from an intrinsic consideration of the state record" it appears that the state procedure, from want of notice or opportunity to be heard, was wanting in due process. That case also points out that the burden is upon the petitioner to point out any ground within the limitation stated which would prevent the Court from giving effect to the conclusions established by the action of the State Supreme Court. The *Radford* case establishes that this Court has no authority as a reviewing court to re-examine or reverse the action of the supreme court of a state, provided only that the state procedure furnish the petitioner notice and an opportunity to be heard and to defend.

In the recent case of *Re Summers, supra,* this Court stated at page 571 of 325 U. S.:

> "Only a decision which violated a Federal right secured by the 14th Amendment would authorize our intervention."

The decision holds that there was no denial of any Federal right secured to petitioner by the action of the Illinois Supreme Court in refusing to grant him a license to practice law in that state.

This Court has often said that the police power of a state should not be lightly interfered with, and that when the parties have been fully heard in the regular course of judicial proceedings, a decision in a state court, even though erroneous, does not deprive the unsuccessful party of his property without due process of law within the meaning of the Fourteenth Amendment. *Central Land Company of West Virginia* v. *Laidley,* 159 U. S. 103, 40 L. Ed. 91, 16 S. Ct. 80. *Dohany* v. *Rogers,* 281 U. S. 362, 74 L. Ed. 904, 50 S. Ct. 299.

"Due process of law" does not necessarily mean a judicial proceeding, the proceeding being adaptable to the nature of the case, but it does necessitate an opportunity for a hearing and a defense. *McMillen* v. *Anderson,* 95 U. S. 37, 24 L. Ed. 335. *Barry* v. *Hall,* 98 Fed. (2d) 222.

The Fourteenth Amendment neither implies that all trials must be by jury nor guarantees any particular form or method of state procedure, and the procedure by which rights may be enforced and wrongs remedied is one peculiarly within state regulation and conduct. *Hardware Dealers' Mutual Fire Insurance Co. of Wisconsin* v. *Glidden Co.,* 284 U. S. 151, 52 S. Ct. 69.

These principles have frequently been applied by the Federal Courts to proceedings involving the disbarment of attorneys from practice before state courts. Thus, in

Philbrook v. *Newman* (1898), 85 Fed. 139, the Circuit Court for the Northern District of California held that judgment of the Supreme Court of California based upon proceedings quite similar to those involved in the instant case did not deprive the disbarred attorney of any Federal right, and that the manner in which the proceeding was conducted, there being notice, opportunity for hearing, and opportunity to defend, constituted due process and equal protection to the petitioner. Pointing out that a general allegation by the petitioner that he was denied the protection of the Fourteenth Amendment was insufficient, the Court said at page 143:

> "It is not claimed but that the proceedings to disbar the plaintiff from the practice of law were the same usually resorted to, not only by the Supreme Court of California, but all other courts in like cases. * * * I cannot see wherein there was any discrimination against the plaintiff, in the proceedings to disbar him, that would show he was not subject to the same rule as any other attorney or counselor at law in like cases within the State of California. It may be said that while the complaint, with many accompanying adjectives, charges that he was disbarred without due process of law, and was not accorded the equal protection of law, I do not recall the statement of any facts showing this to be true. * * * It is evident this Court cannot review the action of the Supreme Court of California in this particular. This is not a court for the revising of the errors of that Court."

In accord is *Keeley* v. *Evans* (D. Ct. Oregon, 1921), 271 Fed. 520.

In *Garfield* v. *U. S. ex rel. Spalding,* 32 App. D. C., 153 (1908) cert. den. (1909) 212 U. S. 583, 53 L. Ed. 660, 29 S.

Ct. 693, the Court held that, in a proceeding to disbar an attorney, due process of law requires specific charges, due notice of the same, an opportunity to make specific answer to them, an opportunity to cross-examine witnesses in support of them, an opportunity to adduce testimony in contradiction to them, and an opportunity for argument upon the law and facts. More recently, the District Court of the District of Columbia in *Hatch* v. *Oomes,* 69 Fed. Supp. 788, held that there was no denial of due process in disbarring an attorney where the charges constituted sufficient basis for the findings and sufficiently apprised the attorney on matters he was called upon to answer, even though he was found guilty of misconduct other than that charged.

Applying the rule of the above cited cases to the present procedure, it is convincingly clear that Mr. Elam had a full and fair opportunity to be heard, to cross-examine witnesses, to produce witnesses of his own, to argue his case, and in all respects to be accorded a complete presentation of his case. In fact, Mr. Elam does not contend he was treated any differently from any other attorney, or that the procedure applied in his case did not follow the accepted and standard state procedure.

In one of the numerous documents filed before this Court, denominated "Motion of Petitioner for Leave to File Typewritten Statement, Brief and Argument, and Supplemental Brief, and for Leave to File Same in Regard to the Files in the Case and Motion for Stay of Enforcement of Judgment of Disbarment," filed on or about October 9, 1948, Mr. Elam states that he has continued to practice law in the Federal Courts and depends upon the decision in the case of *In Re Noell,* 93 Fed. (2d) 5. That case, decided in 1937, holds that the District Court for the East District of Missouri will not recognize a

judgment of suspension against an attorney entered in a lower state court, since in that case the order of suspension was rendered in the state court without notice or hearing, or opportunity to the respondent to be heard, and, therefore, did not constitute due process. The *Noell* case accepts the general rule, as set forth above, but holds that in the particular instance the state procedure was not followed in connection with the suspension of the attorney. The *Noell* case is readily distinguishable from the case at bar. Mr. Elam was not only given ample notice of all proceedings and an opportunity to be heard, but he appeared at all of the proceedings and defended vigorously. The record shows that able counsel was appointed and assisted Mr. Elam in defending his claim to practice law in the State of Missouri, and the entire record, including the opinion of the Missouri Supreme Court (*In Re Elam*, 211 S. W. (2d) 710), shows a vigorous and spirited participation by Mr. Elam at every stage of the proceedings.

III.

Since no right guaranteed by the Constitution was denied to petitioner, the judgment of the Supreme Court of Missouri is binding upon this Court, and the Supreme Court of the United States has no jurisdiction or authority to review the action of that court.

It is well established that the Supreme Court of the United States has no authority to re-examine or reverse, as a reviewing court, the action of a state supreme court in disbarring a member of the bar of the courts of that state for personal and professional misconduct, in the absence of a want of due process or equal protection of the laws in the proceedings leading to disbarment. *Selling v. Radford, supra.*

Petitioner Elam goes far afield in his brief and other papers filed before this Court and challenges the correctness of various rulings of the Missouri Supreme Court. As stated by this Court in *Missouri ex rel. Hurwitz* v. *North, supra,* this Court is bound by the construction of the state law by the highest court of this state. Alleged erroneous constructions of a state's statutes by its highest court are not a denial of due process guaranteed by the Fourteenth Amendment. *Neblett* v. *Carpenter,* 305 U. S. 297, 83 L. Ed. 182, 59 S. Ct. 170. *Davidson* v. *City of New Orleans,* 96 U. S. 97, 24 L. Ed. 616. That a state court's findings are final and binding on this Court, when in the proper exercise of the state's police power and when the proceedings have afforded due process, has been affirmed in cases involving the right of attorneys to practice law, in *Re Summers, Philbrook* v. *Newman* and *Ex parte Lockwood,* all *supra.*

Conclusion.

Respondents respectfully submit:

(1) that the judgment of the Supreme Court of Missouri did not deny to petitioner any right, privilege, or immunity guaranteed to him under the Fourteenth Amendment, and

(2) that, therefore, the findings of fact and conclusions of law of the Supreme Court of Missouri are entitled to full faith and credit, and are binding upon this Court.

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